

**BEFORE THE
COMMISSION ON LANDLORD-TENANT AFFAIRS
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:	*	
	*	
Miriam Elizabeth Bowman	*	
And	*	
Judy Bowman	*	
	*	
Complainants	*	
	*	
V.	*	Case No. 31522
	*	
Theodore and Sharon Lapkoff	*	
	*	
Respondents	*	

Multi Family: 616 Silver Spring Avenue, #3, Silver Spring, MD (Rental Facility License No. 16958)

DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland (the "Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended ("County Code"), and the Commission having considered the testimony and evidence of record, it is therefore, this 3rd day of January, 2011, found, determined, and ordered as follows:

BACKGROUND

On March 18, 2010, Miriam Elizabeth Bowman and Judy Bowman ("Complainants"), former tenants at 616 Silver Spring Avenue, #3, Silver Spring, MD, ("Apartment"), an apartment unit within 616 Silver Spring Avenue Apartments ("Property"), a licensed multi-family rental facility in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs ("Office") within the Department of Housing and Community Affairs ("Department"), in which they alleged that Theodore and Sharon Lapkoff, owners of the Property ("Respondents") unreasonably assessed charges in the amount of \$1009.40, against their \$1750.00 security deposit, for damages that are not in excess of ordinary wear and tear, that are not tenant responsibility, and for which the Respondents incurred no actual cost, in violation of § 8-203(f) of the Real Property Article, Annotated Code of Maryland, 1999, as amended ("Real Property Article).

The Respondents contend that (1) they sent an itemized list of damages to the Complainants within 45 days of their termination of tenancy; (2) the Complainants failed to properly caulk the bathroom of the Apartment prior to their move-out for which they incurred costs to repair; (3) the Complainants failed to return the key to the basement door for which they incurred costs to replace; (4) the Complainants caused a flood in the Apartment, which resulted in extensive damage to the Property for which they incurred costs to repair; and (5) the flood caused by the Complainants resulted in an increased water utility bill, for which they incurred costs beyond ordinary usage. The Respondents assert that no additional refund of the security deposit plus accrued interest is due and that the charges assessed represent costs actually incurred for damages.

The Complainants are seeking an Order from the Commission that the Respondents refund the withheld amount of their security deposit plus accrued interest.

After determining that Case No. 31522 was not susceptible to conciliation, the Department referred this matter to the Commission for review, and on June 1, 2010, the Commission voted to conduct a public hearing on August 9, 2010. The public hearing was subsequently rescheduled. The public hearing in the matter of Case No. 31522, Miriam Elizabeth Bowman and Judy Bowman v. Theodore and Sharon Lapkoff, was held on December 13, 2010.

The record reflects that the Complainants and the Respondents were given proper notice of the hearing date and time. Present and offering evidence were Complainant, Miriam Elizabeth Bowman, and the Respondents, Theodore and Sharon Lapkoff, two witnesses called to testify by the Commission, the Department's Housing Code Enforcement Inspector Ivan Eloisa, and Henry W. Stewart, Jr., Travelers Insurance, and one witness called to testify by the Respondents, their contractor, James Harris. Complainant Judy Bowman was not in attendance.

The Commission entered into the record of the hearing the case file compiled by the Department, identified as Commission's Exhibit No. 1. No other exhibits were entered into the record by the Commission, the Complainants or the Respondents.

FINDINGS OF FACT

Based on the evidence of record, the Commission makes the following findings of fact:

1. On December 9, 2007, the Complainants and the Respondents signed a one-year and ten-day lease agreement ("Lease") for the rental of the Apartment.
2. On December 9, 2007, the Complainants paid the Respondents a security deposit in the amount of \$1,750.00, which amount was properly receipted in the Lease.
3. After the expiration of the initial Lease term, the Complainants remained as tenants in the Apartment on a month-to-month basis.
4. The Commission finds credible the Respondents' and Complainant Miriam Elizabeth Bowman's testimony that on June 23, 2009, a flood occurred at the Property as a result of water left running in the bathroom sink of the Apartment by an occupant of the Apartment or a guest of the Complainants.
5. The Commission finds that the actual costs incurred to resolve damages caused as result of the June 23, 2009 flood are the Complainants' responsibility.
6. On July 28, 2009, the Respondents sent the Complainants a written notice to vacate the Apartment effective September 30, 2009.
7. The Complainants vacated the Apartment as of September 30, 2009, and paid rent in full to the Respondents through that date.
8. On November 9, 2009, forty (40) days after the Complainants' termination of tenancy,

the Respondents sent the Complainants correspondence advising of deductions in the amount of \$1009.49 being made from the \$1750.00 security deposit, plus \$79.93 accrued interest, as follows:

Total credits: \$1,829.93

Total debits: \$ 105.00 – caulking bathroom

5.00 – missing basement door key

Damage to your bathroom, bathroom below and basement sustained water damage due to negligence:

135.00 – landlord rushed to the Property to turn off water and clean up water in the apartment building.

410.00 – damage to the plaster ceiling and wall, and to the door jamb and door in the apartment below.

185.00 – plaster damage on the basement ceiling of building

169.40 - WSSC bill

Total returned: \$820.53

9. The Commission finds that with the November 9, 2009, correspondence, noted in Paragraph #8 above, the Respondents returned to the Complainants a check in the amount of \$820.53, as partial return of the security deposit plus accrued interest.

10. The Commission finds that the Respondents miscalculated the required interest accrued on the security deposit. The required interest accrued on the security deposit was \$78.75, for a total security deposit plus accrued interest in the amount of \$1828.75.

11. The Commission finds credible the testimony of James Harris, that he provided, and was paid for, services completed during the Complainants' tenancy as a result of the June 23, 2009 flood, including: going to the Property, turning off and cleaning up water at a cost of \$135.00; repairing damages to the plaster ceiling, wall and door jamb in the apartment below the Complainants' Apartment at a cost of \$410.00; and repairing plaster damage on the basement ceiling at a cost of \$185.00.

12. The Commission finds credible the testimony of James Harris, that he provided, and was paid for, services completed after the Complainants' termination of tenancy, including: caulking the bathroom of the Apartment at a cost of \$105.00; and replacing a missing basement door key at a cost of \$5.00.

13. The Commission finds credible the testimony of Respondent Theodore Lapkoff that it is the Respondents' practice to caulk the bathroom during tenant turnover.

14. The Commission finds that the Complainants failed to return the basement key to the Property at their termination of tenancy.

15. The Commission finds that the Complainants caused damage to the Property during their tenancy as a result of the June 23, 2009 flood.

16. The Commission finds that the Respondents failed to provide sufficient evidence to support their contention that the June 23, 2009 flood or any other action of the Complainants, the Complainants' guests or the Apartment occupants, caused an increase in the Washington Suburban Sanitary Commission ("WSSC") bill for water utility services.

CONCLUSIONS OF LAW

Accordingly, based upon a full and fair consideration of the evidence, the Commission on Landlord-Tenant Affairs concludes that:

1. The Commission concludes that the Respondents provided the Complainants with a receipt for the Security Deposit in the Lease that advised them of security deposit disclosures, as required by § 8-203.1, "Security deposit receipt," of the Real Property Article.
2. The Commission concludes that the Respondents sent an itemized list of damages, together with a statement of cost incurred to repair the damages, to the Complainants within forty-five (45) days after the termination of their tenancy, as required by § 8-203(g)(1) of the Real Property Article.
3. The Commission concludes that the Respondents miscalculated the interest on the Complainants' security deposit as \$79.93. The Respondents should have credited the Complainants \$1750.00 security deposit with simple interest, accruing from December 9, 2007 through September 30, 2009, in the total amount of 4.5% or \$78.75 (\$1750 security deposit x 4.5% interest = \$78.75).
4. Pursuant to § 8-203 (f)(1)(i) of the Real Property Article, "The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage by the tenant or the tenant's family, agents, employees, guests or invitees in excess of ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings owned by the landlord." Based on the Commission's Findings of Fact, the following charges assessed against the Complainants' security deposit represent actual costs incurred by the Respondents for damages in excess of ordinary wear and tear: going to the Property, turning off and cleaning up water (\$135.00); repairing damages to the plaster ceiling, wall and door jamb in the apartment below the Complainants' Apartment (\$410.00); repairing plaster damage on the basement ceiling (\$185.00); and replacing a missing basement door key (\$5.00), the Commission concludes that deductions in the total amount of \$735.00 were validly assessed and permissible in compliance with § 8-203 (f)(1)(i) of the Real Property Article.
5. Based on the Commission's finding that it is the Respondents' business practice to caulk between tenancies, the Commission concludes that the caulking of the bathroom by the Complainants did not constitute damage in excess of ordinary wear and tear and that the Respondents' assessment of \$105.00 against the Complainants' security deposit for caulking constitutes a violation of § 8-203(f)(1), § 8-203(f)(2), and § 8-203 (g)(1) of the Real Property Article and has caused a defective tenancy.
6. Based on the Commission's finding that the Respondents failed to provide sufficient evidence to support that the June 23, 2009 flood or any other action of the Complainants, the Complainants' guests or the Apartment occupants, caused an increase in the WSSC bill for water utility services, the Respondent's assessment of \$169.40 against the Complainants' security deposit for water utilities which were not clearly established to be damage in excess of ordinary wear and tear as a result of the Complainant's tenancy, constitutes a violation of § 8-203(f)(1)(i), § 8-203(f)(2), and § 8-203 (g)(1) of the Real Property Article, and caused a defective tenancy.
7. The Respondents' failure to handle and dispose of the Complainants' security deposit in accordance with § 8-203 of the Real Property Article, has caused a defective tenancy.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the

Respondent must pay the Complainants \$273.32, which sum represents the Complainants' security deposit (\$1750.00) plus accrued interest (\$78.85) less validly assessed deductions (\$735.00) and the partial security deposit already returned (\$820.53).

Commissioner Denise Hawkins, Commissioner Tangela Bullock, and Commissioner Deanna Stewart, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondents, Theodore and Sharon Lapkoff, must forward to the Office of Landlord-Tenant Affairs, Attention: Rosie McCray-Moody, Administrator, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check made payable to Miriam Elizabeth Bowman and Judy Bowman, in the full amount of \$273.32.

The Respondents, Theodore and Sharon Lapkoff, are hereby notified that Section 29-48 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Decision and Order.

In addition to the issuance of a \$500.00 civil fine (Class A violation), should the Commission determine that the Respondents have not, within thirty (30) calendar days of the date of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may also refer the matter to the Office of the County Attorney pursuant to Section 29-48(c) of the County Code.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals. Be advised that pursuant to Section 29-49 of the County Code, should the Respondents choose to appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award (\$273.32) if they seek a stay of enforcement of this Order.

Deanna Stewart, Panel Chair
Commission on Landlord-Tenant